

**Meeting Minutes for E. coli Rulemaking Workgroup
August 26, 2003, 12:30 p.m. to 3:30 p.m.
Tippecanoe County Extension Office**

Attendees included:

Mary Ellen Gray, Dennis Clark, Chad Frahm, Dan Olson, Jody Perras, Richard Van Frank, Catherine Hess, and Kiran Verma. Jim Meyer and Holly Wirick participated via conference call.

Approval of Workgroup Meeting Minutes of July 16, 2003:

Mary Ellen asked the group whether there were any revisions or corrections to be made to the draft minutes of July 16, 2003. Jodi Perras had a couple of suggestions, which were noted and incorporated into the final minutes as approved.

Update on First Notice:

Mary Ellen read out the names from the comment letters submitted during the first comment period. She explained that it is IDEM's responsibility to summarize and respond to the comments. She stated that the comments would be an agenda item for the next meeting should the group want a discussion on that topic.

Copies of the comment letters were distributed at the meeting for the workgroup's review. She indicated that IKE's comment letter was received outside the comment period, therefore we will not be responding to the comments but will take the comments into consideration.

Full Body Contact Designation Discussion:

Mary Ellen indicated that at the last meeting it was agreed that IDEM would put together some proposed criteria associated with primary and secondary contact designations. IDEM did that and put together some options. Denny Clark stepped through the logic used in preparing the document prepared by Dave Kallander. He noted Dan Olson's corrections to the EPA document distributed. He explained that Class 1a and Class 1b primary contact recreation criteria follow the general direction that Colorado had used. IDEM tried to distinguish between the two and suggest criteria that would apply. Regarding the secondary contact recreation, he explained that the definition reflects what the group talked about and some options have been included in the document.

Dick Van Frank had concerns with secondary contact narrative criteria. Denny explained that U.S. EPA would like us to have a numeric "translator" to implement a narrative standard if we have a narrative standard. Chad Frahm stated that we might as well do the numeric standard. The city of Indianapolis recommended the narrative standard but stated that as long as the numbers were reasonable, they would go along with numeric criteria. Dan Olson from Michigan City was opposed to the numeric standard and would like to have the narrative be included. Some members had concerns with the lack of science available for secondary criteria; therefore they felt it would be difficult to justify the numbers chosen.

A discussion followed on the lack of studies on the subject, and therefore a lack of a scientific basis for the proposed criteria. Jim Meyer wondered if the secondary contact numbers had been challenged in court. Holly Wirick of U.S. EPA was not aware of any litigation, but indicated she would pose that question to the Implementation Guidance Workgroup at U.S. EPA. It was discussed that there are only a limited number of states that have addressed E. coli, it has been more with fecal coliform. The conversion factor for fecal needs to be looked at. The city of Indianapolis is interested in the third option. Another option discussed was not to use geometric mean in secondary contact recreation, and go with just the daily maximum. If there is a single sample maximum, it would make it easier to sample. There was a discussion of another option of not exceeding the standard ten (10) percent of the time, or if it was exceeded, to see if it was due to contamination or wildlife. We need to know what the background E. coli is in areas that are only impacted by wildlife, etc. Some of the members suggested some waterways to look at, such as, Fall Creek, North of 71st Street which meets the standard most of the time, except in a wet weather event; Williams Creek in the Indianapolis area; Dunes Creek in Northwest Indiana, being monitored by USGS. IDEM will contact Dr. Whitman as his office keeps data on this project.

Getting back to primary contact recreation definitions, the city of Indianapolis would like to distinguish between Class 1a and Class 1b: Class 1a should include highest priority waterways, designated bathing beaches, lakes, whereas, Class 1b should include waterways not set up for public access. The daily max for Class 1b waters should be 10 illnesses per 1000, with the 95% confidence level. Mr. Van Frank had concerns with the city's comments. He questioned the task of prioritizing of waters. There was the question of what a designated beach was. Designated beaches were a concern. One interpretation was that a designated beach was one where there would be prolonged contact and a higher frequency. Another argument was that illness rates are dependent on frequency and the number of people using it, and it depends on a number of factors like exposure, resistance, etc. It was pointed out that the difference between 8 and 10 illness per 1000 was not huge and that designated swimming areas seems like a good demarcation. It was clarified that prioritization of clean up had nothing to do with this, but it was the prioritization of risk levels.

The city of Indianapolis recommended a definition of designated areas in their comments submitted to the department, "Designated public beach or public swimming area means surface waters that are promoted or identified as open to the public at large for the purpose of swimming, bathing or similar water contact recreation where the beach or swimming area has the following characteristics: (a) accessible by the public; (b) used by the public; and (c) facilities such as bathhouses, lifeguards and/or parking areas are provided for the use of the public." Holly Wirick suggested that the U.S. EPA's beach guidance draft gives a lot of definitions that the group could look at on the web site. Mr. Van Frank had a concern with the last line of the definition. It was reiterated that the difference between Class 1a and Class 1b needs to be defined.

Denny Clark gave another perspective to the discussion, which is if we go with the 8 and 10 risk levels, what would be the default? The question was whether we should start with all lakes, and known waterways of the state being designated as 8, without a UAA, and municipalities can petition by submitting rationale and justification to change to the next level up. The second approach would be that IDEM would designate all waterways as 10 and waters that are frequented would be 8. Cities and localities could petition for a different designation. It was argued that IDEM does not have the capability to find out about all the uses of the streams. It seemed more logical and easier, to start with 8 and petition for 10. The question was what would be the process. It was suggested that IDEM put together a proposal for the petitioning process. It was discussed that Class 1b should be more than 75% confidence level. The question was asked whether the Antidegradation would apply in the Great Lakes Region while using the 10 illness rate. There was a general consensus that it lends itself better for public participation to have all waters be 8 as a default, and then have the public make a case for the 10-illness rate. It was agreed that there is not much of a difference for communities between 8 and 10 illness rate as far as operating a facility etc., the main change would be the TMDL list and that they would not go on the List of Impaired waters. Dick Van Frank noted that IDEM's list does not include flow data. Questions were raised about IDEM's process again. Denny outlined that it would be a relatively simple public process. It was reiterated that the whole process which IDEM would use needs to be defined and discussed. It was agreed that we should move forward and have IDEM put together a list of waterbodies that would be 8, default would be 10. IDEM would then put together a list of information that would be required to move a waterbody from the default 10-risk level to 8-risk level. Denny explained that it would be a rulemaking process to change water criteria, but would not require a detailed demonstration. The rulemaking process would be one way for incorporating a public participation process. A discussion followed on the difficulties of the task. It was agreed that "child's play" should be included in primary contact designation as it can result in ingestion, and there is a necessity for protecting children.

It was proposed that "wading" should be taken out of the definition of secondary contact recreation. It was decided that IDEM would compile the proposed definitions. The workgroup discussed that Class 1a would have a monthly average of 126 with a daily maximum of 235. In Class 1b, the geometric mean would be used. We need to look at using either 75% or 95%, or something in between the two. Dan Olson offered to take a look at it.

Regarding secondary contact criteria, the group reached no agreement. There was a discussion on the pros and cons on using geometric mean for secondary contact. Jim Meyer proposed a narrative standard till we have a scientific and factual basis for using a numeric standard. It was agreed that Dan Olson and Jim Meyer would look at Dunes Creek information. IDEM's Assessment Branch are to look at Southern and Central Indiana streams that are not impacted by anthropogenic sources. Dick Van Frank would like IDEM to look at Fall Creek. Denny Clark explained that the workgroup has to come up with a number that reflects that raw sewage is not going into the streams. Holly Wirick suggested that the group look at U.S. EPA's guidance document regarding what

criteria should be used: EPA's policy regarding secondary contact recreational use, page 36. She will be getting back with the group regarding some questions raised to her. IDEM will work with Dr. Whitman on E. coli data by Chesterton National Park under wet and dry conditions.

Denny Clark indicated that the IDEM needs to come up with justification for the logic used in preparing secondary contact criteria. Jim Meyer reiterated that the Clean Water Act requires a scientific reason for deriving secondary contact criteria, therefore he is pushing for a defensible number. Denny Clark proposed that secondary criteria represent that these waters are background conditions, rather than risk level. It was suggested that IDEM use best available data and make a decision. The city of Indianapolis emphasized the need for low flow data. The group will discuss this at the next meeting.

ORSANCO update:

Denny Clark gave a brief update on the ORSANCO meeting he had attended. He stated that there was not much new information. The POTWs had made a presentation at the meeting highlighting all the problems with bacterial criteria. No concrete options were presented. ORSANCO will be doing a paper on the four options.

Next Meeting:

The next scheduled meeting was on September 17, 2003, which conflicted with the ORSANCO meeting which Mary Ellen and Denny Clark would be attending. Therefore, two alternative dates were suggested, those being September 25th as the first preference, and September 22nd being the second preference. IDEM would poll the members to get a preference, and then send a Notice of the rescheduled meeting to the workgroup.